

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
TERRY WALLEY,

Plaintiff,

-v.-

P.A., et al.,

Defendants.
-----X**REPORT AND
RECOMMENDATION
TO THE HONORABLE
ANDREW L. CARTER, JR.**

11 Civ. 9053 (ALC)(FM)

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>3/22/13</u>

FRANK MAAS, United States Magistrate Judge.

In this action, the pro se plaintiff complains of being denied pain medication for his gunshot wounds and forced to use crutches to walk before he was ready. By order dated January 4, 2012, Your Honor, directed that Corporation Counsel identify the defendants so that they could be served. Further, the plaintiff was directed to file an amended complaint naming the newly-identified defendants within thirty days of receiving this information. Corporation Counsel supplied the plaintiff with the identifying information by letter dated April 4, 2012. Thereafter, on April 10, 2012 the plaintiff wrote to the Clerk of the Court requesting that he be provided with a service package and a sample copy of how to fill out the Marshal's service forms. The service package was mailed to the plaintiff on May 2, 2012.

A subsequent review of the docket indicated that there was no proof of service of the summons and complaint on file. Additionally, the Marshal's Service advised my Chambers that the plaintiff had not returned the documentation necessary to effect service. I therefore directed, by order dated September 24, 2012, that the Pro Se Office issue a supplemental summons, and that plaintiff take the steps necessary to have the summons and complaint served on the defendants by November 9, 2012. Finally, the plaintiff was advised that if service was not made

by that date, and he failed to show good cause therefor, the Court would recommend dismissal of this action pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

The plaintiff has not amended the complaint as directed by Judge Carter, nor, to my knowledge, has he effected service or communicated with the Court since May 2012. Since the plaintiff has not prosecuted his case, I recommend that this action be dismissed without prejudice.

Notice of Procedure for Filing of Objections to this Report and Recommendation

The plaintiff shall have fourteen days from the service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. See also Fed. R. Civ. P. 6(a) and (e). Any such objections shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of the Honorable Andrew L. Carter, Jr., at the United States Courthouse, 40 Foley Square, New York, New York 10007, and to the chambers of the undersigned, at the United States Courthouse, 500 Pearl Street, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Andrew L. Carter, Jr. The failure to file timely objections will result in a waiver of those objections for purposes of appeal. See Thomas v. Arn, 474 U.S. 140 (1985); Fed. R. Civ. P. 6(a), 6(e), 72(b).

Dated: New York, New York
March 22, 2013


FRANK MAAS
United States Magistrate Judge

Copies to:

Honorable Andrew L. Carter, Jr.
United States District Judge

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